Center for Open Access in Science ▪ https://www.centerprode.com/ojls.html
Open Journal for Legal Studies, 2025, *8*(2), 61-70.
ISSN (Online) 2620-0619 ▪ https://doi.org/10.32591/coas.ojls.0802.02061m

Moral Rights in Copyrights: Modern Philosophical Approaches

Yalon Madar

South-West University "Neofit Rilski", Faculty of Philosophy, Blagoevgrad, BULGARIA
Department of Philosophy & Political Science

Received: 25 October 2025 ▪ Revised: 5 December 2025 ▪ Accepted: 25 December 2025

Abstract

The article examines the Moral Right in copyright law whose core elements are the right of attribution and the right of integrity. The philosophical foundation of the Moral Right lies in the Personality Theory of Kant and Hegel which views creative works as expressions of the authors inner self Other theoretical justifications include the Utilitarian approach incentivizing creation and the Labor Theory reward for effort. The article applies sociological and Postmodern perspectives, drawing on Bourdieu and Foucault to show how copyright law operates as a system of power, shaping cultural production and discourse It argues that current law privileges certain models of creation while overlooking newer collaborative digital forms. Using Sartre's concept of human freedom, the article distinguishes human creators from Artificial Intelligence: only humans choose freely and express personality through creation and therefore only humans can truly hold Moral Rights.

Keywords: right of attribution, right of integrity, AI, Bern Convention, TRIPS Agreement, personality theory, Hegel, Kant, Fichte, Utilitarian, Work Theory, Locke, Postmodernism, Bourdieu, Foucault.

1. Introduction – What is the Moral Right?

The primary components of the Moral Right are twofold: the right of attribution and the right of integrity. However, beyond these, additional Moral Rights exist, some of which have been recognized by certain jurisdictions.

These include: the right not to be attributed as the creator of a work that is not one's own; the right to prevent others from claiming authorship of a work created by the original author; the right to publish a work anonymously or under a pseudonym; the right to withdraw consent for the publication of a work; the right to decide whether to disclose or withhold a work; and, finally, the right to access the work. These elements, too, are increasingly challenged by advancements in Artificial Intelligence.

This right is realized by granting the right to the creator to demand that his name be mentioned on his work or in relation to it. The second right is "the right to the integrity of the work" and is the protection of the creator's work against damage, manipulation and other actions that damage the work or its integrity.

© **Authors**. Terms and conditions of Creative Commons Attribution 4.0 International (CC BY 4.0) apply.
Correspondence: Yalon Madar, South-West University "Neofit Rilski", Faculty of Philosophy, Departmernt of Philosophy & Political Science, Blagoevgrad, BULGARIA.

The center of gravity of this part of the moral right is not in the possible effect of the changes on society's attitude to the creator, but in the effect of the changes on the creator himself while emphasizing his personality characteristics and dignity (Weissman, 2009).

From this we learn that it is a set of rights separate from the economic rights arising from copyright, but at the same time it must be clarified that it is legal rights, despite the name that may mislead; Indeed, the scholars Wiseman and Tedsky proposed to call the moral rights "personal rights" (Weissman, 2009) or "spiritual rights" (Tedsky 1980).

In addition to the two main rights mentioned above, Moral Rights also include secondary rights such as: The right to publish a work anonymously or using pseudonyms; the right to withdraw consent to the publication of the work; the right to disclose or not to disclose the work; And finally, the right to access the work (Nimmer, 2011).

2. The absorption of the moral right

The continental legal system, led by France and Germany, developed the Moral Right as a legal construct intended to safeguard the connection between the creator and their work, even after the creator has relinquished the economic rights to the work (Greenman, 2009).

This right evolved concurrently in the 19th century through a reciprocal relationship between French jurisprudence and German theoretical frameworks. The Berne Convention for the Protection of Literary and Artistic Works (1886) (hereinafter: Bern Convention) incorporated the two primary components of the Moral Right into international copyright law.

1. Characteristics of the moral right

The Moral Right differs significantly between the continental and Anglo-American legal systems. While Europe's Droit d'Auteur doctrine places the creator and their natural rights to their work at the forefront, the Anglo-American Copyright doctrine views copyright as a tool to encourage creativity for the benefit of society, emphasizing Utilitarian considerations (Greenman, 2009). However, it is important to note that this distinction is not absolute, as both legal systems recognize theoretical approaches from one another to varying degrees.

Regarding the duration of the Moral Right, the prevailing tendency among nations is to follow the provisions of the Berne Convention, which aligned the duration of Moral Rights with that of copyright protection. Consequently, the obligation to attribute the creator's name to their work exists as long as the work is under copyright protection. Once the copyright term expires and the work enters the public domain, there is no longer a legal obligation to attribute the creator (Parzanti, 2008).

Additional characteristics of the Moral Right include its inalienable and personal nature; it cannot be transferred and remains with the creator even if they hold no copyright in the work or have transferred the economic rights to another party. Moreover, Moral Rights also extend to derivative works, as derivative works are fundamentally based on the original creation (Greenman, 2009).

3. A brief introduction of the property institution and personality theory in copyright law

The theoretical foundation of Copyright Law, as we know it today, originates in the 18th century in continental Europe, during the philosophical discussions about Natural Rights. It was at this time that the distinction was made between the economic rights and the personal rights

of the creator within the intangible property framework. A brief introduction is needed for a better understanding of the modern theories.

The first and almost important theory is the Personality Theory, which justifies an individual's control over their property, viewing it as an expression of their inner personality in the external world. In the case of creation, it is seen as a formative expression of the creator's personality (Dagan, 2009).

According to the Personality Theory, the human connection to a creation is reflected in the way the work and the resources from which it was made encapsulate the creator's past and present experiences.

The clearer and more direct the connection between the formative resource and the creator, the stronger the justification for granting proprietary rights to the creator. The legal system supports this connection through the legal protection provided by the Moral Right. This is most clearly evident in the Moral Right, as the protection of such formative resources holds independent social and moral value (Dagan, 2009).

The theoretical and philosophical basis of the Moral Right in Intellectual Property can be traced to the writings of Immanuel Kant, Georg Wilhelm Friedrich Hegel, and Johann Gottlieb Fichts, specifically the personality theory developed by Hegel and Kant. These writings were profoundly influenced by the Romantic movement, which guided the philosophical discourse and cultural creation of the 19th century (Adeney, 2009; Galily, 2023).

Based on the Personality Theory, rooted in Natural Law, exploiting a creation or using it without the creator's permission constitutes a violation of the creator's right to their personality and an infringement on their liberty and autonomy as an individual (Pesach, 2009). The connection between Copyright and Personality Theory also extends to a broader level, relating to the general justification of property rights based on Personality Theory.

Beyond the personality theory, two additional central theories are used to justify the recognition of Copyright: The Utilitarian approach and the Labor Theory. A brief discussion of these two theories will help frame the focus on the personality theory as it pertains to the Moral Right.

The Utilitarian approach, often referred to as the "incentive argument," recognizes Copyright to encourage the creation and dissemination of expressions, works, and other abstract goods with societal value. This purpose is achieved by providing economic incentives through the granting of Copyright. The Utilitarian approach recognizes Copyright when it benefits society as a whole, as the creator serves as a public agent and a means of promoting the public interest rather than being viewed as an independent entity deserving protection (Zarader, 2015).

The Labor Theory, sometimes referred to as the "reward argument," is a perspective that views Copyright as a fair reward owed to the creator for the effort and resources invested in producing the protected work. This theory is primarily based on considerations of justice and fairness and derives from the philosophy of John Locke. According to Locke's property theory, when an individual takes a natural resource, provided by God, and enhances it with labor and creativity, that resource becomes their property (Zarader, 2015).

However, it is worth noting that while Locke himself did not explicitly address intellectual property in the context of Copyright, scholars have interpreted his theory as providing a foundation for the justification of intellectual property rights (Zarader, 2015).

The Anglo-American approach does not place significant emphasis on the Moral Right or the integrity of the work and does not base the Moral Right on the Personality Theory. Instead, this approach prioritizes the Utilitarian rationale for Copyright. Nevertheless, in recent

years, the Personality Theory has gradually gained traction within the Anglo-American legal framework.

4. A Sociological analysis of contemporary society in the context of copyright law postmodernism

Although there is no concept that garners greater resonance among intellectuals across a wide array of academic fields today, the precise meaning of the term "Postmodern" remains a matter of controversy. In a nutshell, Postmodern theory challenges the validity of the assumptions underpinning Modernist theory, which aimed to ground its analyses and critiques of society on universal, ahistorical, and rational foundations.

Instead, Postmodern theorists question the ability of Modern theory to encompass all social and historical phenomena and cast doubt on the pretensions of Modern theories to provide comprehensive and far-reaching answers to the questions occupying human culture. Postmodern thought is divided into various theories that collectively form the framework of Postmodern philosophy.

Initially, Structuralist theory emerged, followed by post-structuralist theory, and eventually the Postmodern Social theory. Due to the brevity required here, this is not the place to delve into the distinctions between these 20th-century theories. Moreover, it has always been challenging to precisely delineate the boundaries between these theories, particularly between Post-Structuralist and Postmodern theories (Ritzer, 2006).

Nevertheless, it is important to clarify that the thinkers whose terms I will employ are categorically aligned with the Structuralist school of thought. Structuralism is primarily concerned with linguistic structures, positing that meanings, consciousness, and ultimately the social world are shaped by the structure of language. In contrast to the existentialist worldview (as articulated by Jean-Paul Sartre), which envisions individuals shaping their environments, Structuralist theory asserts that the social world is shaped by the structure of language.

Having now laid the groundwork for both Postmodern and Structuralist theory, I will proceed to analyze the tools that will later assist me in examining the justification for the existence of the Moral Right.

5. Bourdieu and the field of cultural production

The Structuralist approach, to which the French sociologist Pierre Bourdieu belongs, posits that social phenomena do not occur independently or in isolation from one another. Instead, these phenomena occur structurally, within a superstructure that directs and organizes them.

Bourdieu's central argument is that the dominant class in the structure of capitalist society is the one that holds economic, social, and even symbolic power, power embodied in economic and cultural capital, integrated into societal institutions and practices, and perpetuated through these very institutions and practices (Lechte , 2009).

According to Bourdieu, cultural production is regulated within a Field, an organized space of human knowledge. Bourdieu critiques the field as serving the narrow interests of stakeholders, aiming instead to analyze inequality and class distinction structurally rather than ideologically. As Bourdieu states: "A field is a structured space, an arena of power, it has dominant and dominated agents, and it is characterized by ongoing, enduring relations of inequality that prevail within this space.

It is also a battlefield for the preservation or transformation of these power relations." Each agent within the field is defined by their position in the space and competes with others using the resources at their disposal, which in turn determine their status and control within the field (Lechte,· 2009).

A complementary concept to the field is Cultural Capital—one of Bourdieu's seminal contributions. Cultural Capital refers to an individual's ability to utilize cultural assets for broader control over societal resources, such as art, religion, and education.

As elaborated by scholar Michael Birnhack, Copyright Law engages with the Field of Creation, wherein the law itself constitutes a "field" shaped by reciprocal interactions and power struggles among agents and institutions operating within it. In the field of creation, numerous actors are involved, foremost among them the creators themselves. However, intermediaries such as employers, commissioners of works, and various facilitators also play critical roles, alongside the audience—the users of creative works (Birnhack· 2009).

Copyright Law serves as a central arena where the law intersects with the field of creation, influencing internal power dynamics, providing incentives to different players, and shaping their behaviors. This legal intervention exists alongside other influencing factors such as market forces, social norms, and technological advancements.

Copyright Law seeks to intervene in general cultural content and direct it toward objectives deemed desirable by legal creators. However, according to Birnhack, Copyright Law also has a meta-cultural aspect, as it not only determines cultural content and meanings in society but also influences the very way meanings are formed (Birnhack, 2009).

Thus, we see that the law shapes the cultural categories of creators and the creative process, with the choice of a particular cultural category amounting to no less than a value-based decision.

6. Foucault and the concepts of "Power" and "Discourse"

Michel Foucault, one of the most prominent French sociological thinkers of the 20th century, introduced two highly relevant concepts for our discussion: "Discourse" and "Power." To begin with the concept of Discourse, Foucault argued that it does not necessarily represent language but rather a system that structures reality and mediates between human experiences and how individuals relate to them. Foucault's notion of Discourse seeks to explain how knowledge is defined and organized within a specific framework and, just as importantly, whom the Discourse serves. By employing prohibitions and permissions regarding the subject of the Discourse, the object of the Discourse, and its mode of expression, the bearer of the Discourse supervises and excludes those deemed undesirable from engaging with it.

Discourse significantly limits the potential scope of conversation, as the speaker is subject to a system of norms, interpretations, and disciplines tied to a specific theoretical field (Lechte,· 2009; Цеков, 2016).

The second concept relevant to our discussion is Power, which Foucault described as a "network" of relations spread like "capillaries" throughout society, defying reduction to a single dominant entity such as the state or economic elites.

Foucault did not view Power as something exclusively possessed by certain groups or institutions and absent from others. Instead, he identified political power with the law and its enforcement mechanisms, while also recognizing other manifestations of Power in modern societal institutions, from prisons to psychological and psychiatric professionals. This is

exemplified in his work *Madness and Civilization: A History of Insanity in the Age of Reason* (Lechte, 2009).

Finally, Foucault proposed defining Power as a system of relationships where all parties have a capacity for action and a range of responses, meaning that all sides retain a degree of freedom. According to this definition, Power relations can, in imbalanced situations, involve one party restricting the other, but they can also be relationships of cooperation or even mutual creation (ARBEL, 2006).

7. Conclusion – Application of theoretical frameworks in copyright law

Foucault's concepts of "Power" and "Discourse" function effectively within the framework of Copyright Law. As international law and national legislation define the creation, the creator, and the beneficiaries of rights, they simultaneously create a Discourse that allocates Power to some while revoking it from others. This occurs within a framework where seemingly equal actors compete for the right to benefit from the fruits of creation defined by the Discourse. "To exercise Power relations, there must be some form of freedom on both sides," Foucault writes in his work *The Ethic of Care for the Self* (Arbel, 2006).

As can be seen in legal disputes generally, and in copyright specifically, the opposing parties possess a degree of freedom and tools for engagement that, within the legal process, appear to be equal.

Instead of explaining the mechanisms of Power in society through interests or intentions, Foucault suggests using terms like strategies and tactics, which arise as solutions to problems within given constraints. In this framework, the ability of one party (in Foucault's context, the bourgeoisie) to exert control is not the result of deliberate action but emerges from systemic strategies (Arbel, 2006).

The battlefield, as Bourdieu describes it, in which struggles over the structure and attribution of the structured space occur, plays a significant role in the field of creation. Regarding the creative process, Copyright Law grants creators substantial control over their works and their uses, and consequently over the interpretations that can be attributed to them.

It appears, then, that Copyright Law does not encompass all types of creators or all types of creations. Instead, it largely reflects the image of the Romantic creator while also accommodating the individual commercial creator and corporate creations. Moreover, there is recognition that the creative process is not solitary; it unfolds over time and involves ongoing interaction between users and creators. Users of creative works are, in part, interpreters and new creators, while others serve solely as interpreters of existing works.

However, there are positive aspects within the existing law, such as recognition of intertextuality and even a Postmodern interpretive approach that acknowledges the fluid, dynamic, and ever-changing nature of meaning. Meaning is not fixed at a single point but arises within the space between the creator, the creation, other works, and the users themselves (Birnhack, 2009; Tsekov, 2024).

Nevertheless, Copyright Law fails to embrace—and to a significant extent excludes—collaborative creation patterns that fall outside corporate frameworks, thereby overlooking new creative processes emerging today. These processes are facilitated by the techniques and technologies provided by the digital age (Fomteau, 2024).

8. Human freedom according to Sartre and moral rights in the age of artificial intelligence

Jean Paul Sartre regarded freedom as the foundation of human existence. In his view, man is not defined in advance by nature circumstance or structure, he is born without an essence and becomes who he is only through his choice's reactions and actions. Even in situations that appear to offer no real choice, one's response to them is itself an expression of freedom. In other words, man is the only being responsible for shaping himself and for giving meaning to his own life.

From this perspective arises the essential distinction between human beings and artificial intelligence. Although AI can learn, adapt and produce complex outputs, it is not free in the Sartrean sense. It does not choose its own existence, it bears no moral responsibility for its actions and its essence the code algorithms and objectives defined for it precedes its existence. For Sartre, freedom stems from the ability to choose and to be accountable for that choice, a capacity that exists only in a being conscious of itself as free.

This distinction leads directly to the concept of moral rights in copyright law. Such rights are grounded in the idea that artistic creation is an expression of the creator's personality and freedom. A work of art embodies the creator's decisions values and consciousness it is an extension of the self. Thus, only a human being capable of choice responsibility and authentic self-expression can truly possess moral rights.

By contrast when an AI creates its output is not an act of self-expression but the result of data processing according to predetermined rules. Artificial intelligence therefore cannot claim moral rights over its creations for it lacks freedom intention and responsibility the very foundations of the human condition as understood by Sartre.

Acknowledgements

This research did not receive any specific grant from funding agencies in the public commercial, or not-for-profit sectors.

The author declares no competing interests.

References

Adeney, E. (2006). *The Moral Rights of Authors and Performers – An International Analysis*.

Ashkenazi, A. (2009). Statutory Damages Without Proof of Loss, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 573.

Afori, O. F. (2009). Judicial Discretion in Granting Injunctions: The Quiet Revolution, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 529.

Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994 .

Arbel, I. (2006). *Foucault and Humanism*.

Bainbridge, D. I. (2004). *Introduction to Computer Law* (5th ed.).

Bern Convention for the Protection of Literary and Artistic Works, sept. 9, 1986, art. 6bis .

Birnhack, M. (2009). A Cultural Reading: The Law and the Field of Creation, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 83.

Birnhack, M., & Pessach, G. (2009). Preface, in M. Birnhack & G. Pessach (Eds.), *Creators' Rights: Readings in the Copyright Law*, 2.

Bourdieu, P. (1999). *On Television*.

Dagan, H. (2009). A Proprietary Reading: The Renewed Proprietary Institution of Copyright, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 39.

Easterbrook, F. H. (1996). Cyberspace and the Law of the Horse, *University of Chicago Legal Forum*, 207.

Fisher, W. (1997–1998). Theories of Intellectual Property, *Chi.-Kent L. Rev.*, 73, 1203.

Fomteau, J. (2024). *La Propriété Intellectuelle au Service de la Créativité; de l'Innovation et du Développement Durable de l'Espace OAPI*.

Fung, P., & Etienne, H. (2021). Confucius, Cyberpunk and Mr. Science: Comparing AI Ethics between China and the EU.

Galily, D. (2023). Philosophy of Law or Philosophy of Reason–The Idea of a Treaty Establishing a Constitution for the European Union, *Athens Journal of Philosophy*, Athens Institute for Education and Research (ATINER), Athens, Greece.

Gieseke, L. (1995). *Vom Privileg zum Urheberrecht: Die Entwicklung des Urheberrechts in Deutschland bis 1845*.

Greenman, T. (2009). The Moral Right – From Droit Moral to Moral Rights, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 439.

Gupta, R. (2011). Copyright v. Copyleft: A Feminist Perspective on Marginalization under Copyright Laws, *NUJS L. Rev.*, 4, 65.

Hettinger, E. C. (1989). *Philosophy & Public Affairs*, 18, 31.

Hughes, J. (1999). "Recoding" Intellectual Property and Overlooked Audience Interests, *Texas Law Review*, 77, 923.

Karniel, Y., & Nesimyan, O. (2003). Copyrights in the Information Age: The Need for a New Balance Between the Creator's Right and Freedom of Information, *Aley Mishpat*, 3, 191, 194–195.

Khoury, A. (2009). International Reading: The Law and Foreign Sources of Influence, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 237.

Klein, N. (2005). *No Logo*.

Landes, W., & Posner, R. (1989). An Economic Analysis of Copyright Law, *Journal of Legal Studies*.

Laffont, R. (2001). *La France de la Renaissance Histoire et Dictionnaire*.

Lechte, J. (2009). *Fifty Key Contemporary Thinkers: From Saussure to Žižek*.

Lessig, L. (2004). *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*.

Locke, J. (1997). *Second Treatise of Government*.

Malikova, R. (2023). Moral Rights and AI-Generated Works: Rethinking Authorship, Central European University, Budapest, Hungary.

Malikova, R. (2023). Copyright Protection of AI-Generated Works: Who Owns AI-Generated Works? Can AI Be an Author? The EU and the UK Approach, Central European University, Budapest, Hungary.

Miernicki, M. (2020). Artificial Intelligence and Moral Rights.

Moreau, É. (2011). *Les Droits d'Auteur*. Presses de l'École des Mines, Paris, France.

Nimmer, M. B., & Nimmer, D. (2011). *Nimmer on Copyright § 8D.01*.

Netanel, N. (1992–1993). Copyright Alienability Restrictions and the Enhancement of Author Autonomy: A Normative Evaluation, *Rutgers Law Journal*, *24*, 347.

Pessach, G. (2001). The Theoretical Basis for Recognizing Copyright, *Mishpatim*, *31*(2), 359.

Peresenti, S. (2008). *Copyright Law, Volume II* (3rd ed.).

Radin, M. J. (1993). *Reinterpreting Property*.

Rajan, M. T. S. (2011). *Moral Rights*.

Ritzer, G. (2006). *Modern Sociological Theories: Schools and Approaches in Political Research: Reader and Discussion*.

Robert, J. S., & Montoya, L. N. (2022). Contextualizing Artificially Intelligent Morality: A Meta-Ethnography of Top-Down, Bottom-Up, and Hybrid Models for Theoretical and Applied Ethics in Artificial Intelligence.

Spingman, C. J. (2012). Valuing Attribution and Publication in Intellectual Property, *Virginia Law and Economics Research Paper*.

Synodinou, T.-E. (2024). Digital Transformations and the Moral Right of the Author, Springer Nature, Cham, Switzerland.

Tedeschi, G. (1980). Intellectual Property and Personal Rights, *Mishpatim*, 10, 392.

The Universal Declaration of Human Rights, dec. 10, 1948, art. 27(b) .

Treiger-Bar-Am, L. K. (2008). Kant on Copyright: Rights of Transformative Authorship, *Cardozo Arts & Entertainment Law Journal*, 25(3), 1059.

Tsekov, B. (2024). По въпроса за парламентарното управление като гарант на демокрацията. Studia Iuris, (1), 55-65.Treiger-Bar-Am, K. (2008). Kant on Copyright: Rights of Transformative Authorship, Cardozo Arts & Entertainment Law Journal, Vol. 25, No. 3, p. 1059.

Vivant, M. (2025). *Droit d'Auteur et Droits Voisins*.

Weissman, Y. (2009). A Comparative Reading: Characteristics of the Copyright Act, in M. Birnhack & G. Pessach (Eds.), *Creating Rights: Readings in the Copyright Law*, 69.

Weisman, Y. (1989). The Personal Right (Droit Moral) in Copyright Law, *Law Studies*, 7, 51–64.

Zarader, J. P. (2015). *Les Grandes Notions de la Philosophie*.

Цеков, Б. (2016). Някои открити въпроси в конституционната уредба на извънредното положение.– сп.„. Общество и право “, бр, 4

C O A S